

1 International Criminal Court
2 Trial Chamber V
3 Situation: Central African Republic II
4 In the case of The Prosecutor v. Alfred Rombhot Yekatom and Patrice-Edouard
5 Ngaïssona - ICC-01/14-01/18
6 Presiding Judge Bertram Schmitt, Judge Péter Kovács,
7 Judge Chang-ho Chung and Judge Beti Hohler
8 Article 76 Sentencing Hearing - Courtroom 1
9 Wednesday, 8 January 2025
10 (The hearing starts in open session at 9.31 a.m.)
11 THE COURT USHER: [9:31:22] All rise.
12 The International Criminal Court is now in session.
13 Please be seated.
14 PRESIDING JUDGE SCHMITT: [9:31:44] Good morning, everyone.
15 Court officer, please call the case.
16 THE COURT OFFICER: [9:31:49] Good morning, Mr President, your Honours.
17 Situation in the Central African Republic II, in the case of The Prosecutor versus
18 Alfred Yekatom and Patrice-Edouard Ngaïssona, case reference ICC-01/14-01/18.
19 And for the record, we are in open session.
20 PRESIDING JUDGE SCHMITT: [9:32:06] Thank you.
21 I ask for the appearances of the parties. Mr Vanderpuye first.
22 MR NIANG: [9:32:17](No interpretation)
23 THE INTERPRETER: [9:32:23] Sorry.
24 MR NIANG: [9:32:27](Interpretation) I understand. I understand. It's
25 unexpected.

1 The OTP is represented today by myself, the Deputy Prosecutor, Mame Niang. And
2 next to me is Vanderpuye. And then the familiar faces of the substitute -- of the
3 main. There's Mrs Olivia Struyven, who is a deputy for the Prosecution, and also
4 Maria Berdennikova, who's also a substitute. Sylvie Wakchom, who's also an
5 associate for the substitute of the Prosecution. Manochitra Prathaban, again a
6 substitute associate. Yassin Mostfa, who is the case file manager. And finally,
7 Madam Leila Haccius. Thank you.

8 PRESIDING JUDGE SCHMITT: [9:33:27] Thank you so much.

9 And now we turn to the representatives of the victims.

10 MS DOUZIMA-LAWSON: [9:33:34](Interpretation) Thank you, your Honour.

11 Your Honour, Madam, and members of the Court, the representative for the victims
12 of other crimes is made up of Paolina Massidda, Orchlon Narantsetseg, Enrique
13 Carnero Rojo, Alexis Lariviere, Evelyne Ombeni, and myself, Marie-Edith Douzima.

14 PRESIDING JUDGE SCHMITT: [9:34:09] Thank you.

15 And the representatives of the former child soldiers.

16 MR SUPRUN: [9:34:15] Good morning, Mr President. Good morning, your
17 Honours. The former child soldiers are represented today by Amina Merrouche and
18 myself, Dmytro Suprun. Thank you.

19 PRESIDING JUDGE SCHMITT: [9:34:25] Thank you.

20 I turn to the Defence. First, the Defence of Mr Yekatom.

21 MS DIMITRI: [9:34:28] Good morning, Mr President. Good morning, your
22 Honours. Good morning, everyone. Mr Yekatom is present in the courtroom today
23 and he's represented by Ms Anta Guissé, Ms Sarah Bafadhel, Mr Gyo Suzuki,
24 Mr Florent Pages-Granier, Ms Sabrina Bayssat, Ms Yousra Lamqaddam,
25 Ms Alexandra Baer, Ms Léa Benoît, and myself, Mylène Dimitri.

1 PRESIDING JUDGE SCHMITT: [9:34:54] Thank you very much.

2 For the Defence of Mr Ngaïssona, Mr Knoops, please.

3 MR KNOOPS: [9:34:59] Good morning, Mr President, your Honours. Good

4 morning. First of all, our team wishes the Court, especially the Bench, everyone in

5 the courtroom, best wishes for the new year and a prosperous judicial new year.

6 I think that's important to say first.

7 We are represented today, Mr President, by Ms Marie-Hélène Proulx, Sara Pedroso.

8 Madam Lou Crignon, second bench, Mathias Goffe, Despoina Eleftheriou. And on

9 my left side, Alexandre Desevedavy, Melissa Beaulieu, and Chiara Giudici. And

10 Mr Ngaïssona is on the third row. Thank you.

11 PRESIDING JUDGE SCHMITT: [9:35:40] Thank you, Mr Knoops.

12 Now, the first to make the submissions is the Prosecution. I give you the floor.

13 MR NIANG: [9:35:52](Interpretation) Once again, thank you, Mr President, your

14 Honours.

15 The Prosecution -- the Prosecutor Vanderpuye will submit our arguments on behalf of

16 the Prosecution. I don't want to miss this opportunity to speak on behalf of the main

17 Prosecutor, but on behalf of the entire OTP I would like to thank you, firstly, you,

18 Mr President, your Honours, for your patience. And also I would like to thank all

19 the parties in this case who, within a few weeks, have allocated almost four years to

20 this case. It has been a lengthy case. It was a very difficult period which we had to

21 traverse because we had to also face the problems of COVID. We had to be very

22 creative in our proceedings, in how we proceeded, in order to continue with the case

23 during that period, and it's thanks to the perseverance of everyone and, therefore, I

24 am very grateful to everyone for that.

25 Furthermore, I would like to say a few words, before handing over to Mr Vanderpuye,

1 to remind you of what you already know of what has happened in the Central
2 African Republic and its people through this case. Very often we talk about these
3 crimes, and when we do, there's a certain risk. What's that risk?
4 Firstly, is that everybody is affected by the gravity and the enormity of the
5 crimes. Unfortunately, when we in this hall, this room, all the risk was reduced to
6 mere numbers. We talk about the number of victims and, unfortunately, we can't
7 even put a name to each victim. The risk is that if we are not careful we become very
8 antiseptic and it becomes a very technical exercise.

9 I wanted to say this before handing the floor to Mr Kweku, to remind you of that.

10 I know you are aware of that, but I think we need to remind ourselves of that.

11 It might now be moving on to three years that I am here, but one of the countries
12 which I visited the most is the Central African Republic. I have been there on several
13 occasions, and throughout all my visits I had the privilege, and I must say the
14 enormous privilege, to meet some of the victims.

15 I saw communities that had suffered the serious consequences. I'm not only talking
16 about deaths, but also amongst the survivors, I noticed how much they had been
17 impacted. For the majority, they lost everything that, despite everything we do, we
18 cannot give back to them. We are also in a restorative system of justice, so we must
19 provide a sentence which corresponds to the scope and gravity of the damages
20 occurred. This is what I would like to remind you of before handing over to
21 Mr Kweku.

22 Remember the victims. Remember also the survivors. I remember the first days
23 when I was here, when I was becoming familiar with the file, when I looked at the
24 statistical composition of the Central African Republic. Bangui has completely
25 changed because of what has happened there. I would like to remind you of that

1 before handing over to my colleague.

2 Thank you for listening.

3 PRESIDING JUDGE SCHMITT: [9:40:38] Thank you.

4 Mr Vanderpuye.

5 MR VANDERPUYE: [9:41:13] Good morning, Mr President. Good morning, your

6 Honours. Good morning, everyone.

7 Thank you, Mr Deputy.

8 It's my privilege to appear before this Chamber once again in this matter on behalf of

9 the Office of the Prosecutor and my team.

10 Let me just say that we don't expect to use the full three hours that we have been

11 allotted, but you know how that goes, Mr President, so I'll do my best to finish up a

12 little bit early.

13 Our written submissions as you know address several issues before the Chamber and

14 I hope that we don't have to revisit too many of them. We have carefully evaluated

15 the respective Defence teams' written submissions. Some of the arguments that are

16 raised there we anticipated in several filings during the course of the trial and also

17 addressed to the extent possible in our limited written submissions, so we don't

18 believe that a substantial amount of time is necessary in order to develop them.

19 However, with that said, we do intend to address some of the salient issues

20 underpinning our specific recommendations in this case and which respond to the

21 Defence's characterisation of the case as concerns the accused's participation and

22 intent and other factors listed in Rule 145.

23 This is the first time at the Court in which sentencing submissions will have been

24 made and argued before an Article 74 judgment has been issued. Our submissions,

25 therefore, proceed on the basis that the defendants are convicted as charged, an

1 outcome that we firmly believe the vast amount of evidence in this case not only
2 substantiates, but compels.

3 Let me just turn briefly to the Prosecution's sentencing recommendations. As
4 indicated in our 13 December written submissions, the Prosecution considers that
5 upon conviction of the charged crimes, the defendants Alfred Yekatom and
6 Patrice-Edouard Ngaïssona should receive joint sentences of not less than 22 years
7 and not less than 20 years respectively. These terms of imprisonment fairly and
8 appropriately reflect the gravity of the crimes charged, the scope and the breadth of
9 victimisation, the attendant circumstances, including, aggravation, and the absence of
10 any compelling mitigating circumstances pursuant to Articles 77 and 78 and Rule 145.
11 They will, moreover, ensure that the objectives of sentencing within the
12 contemplation of the statutory framework are achieved, particularly retribution and
13 deterrence.

14 The crimes for which these defendants bear responsibility are extremely grave.
15 They're shocking not only in their nature, but also in the manner in which they were
16 systematically perpetrated by the Anti-Balaka. These crimes were inflicted on
17 vulnerable persons, insular, defenceless communities and innocent civilians,
18 including children.

19 Nothing of such conduct or participating in it to any extent, regardless of the motive,
20 is excusable. Nothing of it is justifiable. The nature of the crimes to which the
21 defendants contributed are set out in the confirmation decision, and we believe they
22 have been proved beyond any doubt in this case.

23 As you know, in some instances the charged conduct is classified as both crimes
24 against humanity and war crimes, specifically: murder; forcible transfer and
25 deportation, displacement; torture; and rape.

1 The conduct classified as crimes against humanity only, particularly are: severe
2 deprivation of physical liberty; persecution; and other inhumane acts.

3 And the conduct charged as war crimes only are: cruel treatment; directing attacks
4 against the civilian population; conscription, enlistment and use of children under the
5 age of 15 years to participate actively in hostilities; directing attacks against a building
6 dedicated to religion; pillaging; and the destruction of the adversary's property.

7 Mr Yekatom is responsible for 21 counts.

8 Mr Ngaïssona is responsible for 31 counts.

9 The breadth and depth of their respective participation in the crimes is substantial to
10 say the least. In many domestic jurisdictions, criminal responsibility for a single
11 murder could easily justify the imposition of a life imprisonment sentence, if not a
12 very lengthy one.

13 Participation in the commission of such an offence under the Statute in any form is at
14 least as grave. Their inclusion in the Statute means, by definition, that the conduct
15 comprises the most serious crimes of international concern.

16 I can't emphasise that enough. We are here precisely because of the nature and,
17 importantly, the gravity of the offences charged and in which the accused
18 participated is immense. As Article 1 of the Statute contemplates, the purpose and
19 scope of the Court's establishment is to "exercise jurisdiction over persons for the
20 most serious crimes of international concern". While the several crimes I've just
21 outlined are self-evidently serious, imposing a sentence of conviction for any one
22 crime must reflect the degree of seriousness for which this Court was
23 established -- the seriousness which demands that the defendants' meaningfully be
24 held to account for their participation and involvement in the crimes; the seriousness
25 which understands that it is their individual conduct - that is, the measure of their

1 culpable participation - and the seriousness which impels the Prosecution to demand
2 that this Court of last resort deliver justice for the thousands of victims of the
3 Anti-Balaka's crimes to which these defendants criminally contributed.

4 Simply put, serious crimes demand serious punishment.

5 Our recommendations are consistent with the general principle that a sentence be
6 proportionate to the gravity of the offences committed, and that it fully reflects the
7 convicted person's degree of participation and/or culpability in the commission of the
8 offence.

9 The different recommendations as between the two defendants are justified and
10 appropriate in the circumstances of this case. Mr Yekatom was more hands-on in
11 the commission of the crimes within the context of his Anti-Balaka group as its
12 senior-most figure and commander. Ultimately, he played an essential role in his
13 group's commission of the charged crimes. Mr Ngaïssona, however, was a leader in
14 the broader Anti-Balaka movement whose conduct and participation extended well
15 beyond any single group of local elements. His conduct went towards the collective
16 of Anti-Balaka groups operating in the western Central African Republic. As such,
17 his physical distance from the commission of the crimes is not a mitigating factor for
18 the purposes of sentencing.

19 As his own words made clear, and I quoted them previously, in French:

20 (Interpretation) "The Anti-Balaka have not got two entities. The Anti-Balaka which
21 I coordinate is a sole and single movement which is throughout the entire territory.

22 When I give an order to my children, I think that it is immediately put into action."

23 (Speaks English) CAR-OTP-2122-9374.

24 That doesn't require a physical presence and it is not decidedly peripheral or
25 marginal involvement. The defendants contributed in different ways to the

1 commission of the Anti-Balaka's crimes, with Yekatom as a principal and
2 Mr Ngaïssona as an accessory. Both were senior members with authority and
3 influence. Mr Ngaïssona acquired greater de jure authority in the group during the
4 Anti-Balaka's commission of a number of charged crimes - and, I emphasise
5 "during" - including those crimes committed by Mr Yekatom and his elements
6 in January and February 2014, and those constituting continuing offences which
7 began with the charged Anti-Balaka attacks on 5 December at Bangui and Bossangoa,
8 essential components in the plan to reclaim power -- I'll come to that.

9 The recommended sentences are, furthermore, consistent with the appropriate
10 treatment of convictions for multiple crimes provided for under Article 78(3) as
11 I mentioned, 21 and 31 counts respectively between the two.

12 Finally, the recommended sentences reflect the gravity of the crimes given that they
13 go to the heart of this Court's function, duty and, of course, its express mandate. As
14 the preamble provides, the Court is established to address:

15 "... the most serious crimes of concern to the international community as a whole" and
16 "must not go unpunished", and "to guarantee lasting respect for and the enforcement
17 of international justice."

18 Before I come to the gravity of the crimes more fully, I would first like to address the
19 defendants' respective degree of participation and intent and other factors under
20 Rule 145(1)(c).

21 The Chamber has the Prosecution's submissions on the law regarding the modes of
22 liability concerned in this case, and particularly the elements and application of
23 Article 25(3)(c) and (d). These are set out in our November 2020 trial brief in three
24 separation applications for recharacterisation of the modes of liability under
25 Regulation 55(2) in May 2020, April 2022, and in July 2023. They're further set out in

1 our application for reconsideration and alternative request to appeal the decision on
2 the confirmation decision filed in March 2020.

3 Mr Yekatom's participation in the charged crimes is clear and it is substantial. The
4 modes of liability with which he is charged as a principal in committing those crimes
5 and in ordering and instructing their commission are straightforward legally and
6 factually. His conduct precipitated the crimes against humanity and war crimes
7 committed by his Anti-Balaka group.

8 The facts underpinning the elements of the modes of liability with which he is
9 charged amply demonstrate Mr Yekatom's substantial degree of participation and
10 intent as regards the commission of the charged crimes. Although not aggravating
11 as such, these facts are clearly important for the Chamber's determination of an
12 appropriate sentence. In this case we consider that they justify the imposition of the
13 22 years that are recommended.

14 A finding of criminal responsibility under Article 25(3)(a) in this case presupposes
15 that the Chamber has found the following predicate facts: That Mr Yekatom actually
16 committed the charged crimes as a co-perpetrator - that is, as a principal - that he
17 agreed to a course of conduct with others which involved the commission of crimes
18 under the Statute and that the charged crimes properly fell, or fall, within the scope of
19 that agreement, whether tacit or express; that he made an essential contribution to the
20 common plan; and that he acted with the requisite intent and knowledge regarding
21 the perpetration of the charged crimes.

22 In essence, in consideration of the sentence, the Chamber will necessarily have
23 already determined culpability and, as such, that Mr Yekatom knew exactly what he
24 was doing, and that his contributions to the commission of the charged crimes at any
25 stage, whether at conception, planning, preparation, attempt or execution, were such

1 that he had control over whether those crimes would be committed or the manner in
2 which they would be committed.

3 As an indirect perpetrator, the Chamber will have found that Mr Yekatom committed
4 the crimes through another or through his group, that he had control over the will of
5 his group, that his group was hierarchically organised, and that the crimes were
6 executed with near automatic compliance with his orders.

7 Likewise, in finding Mr Yekatom criminally responsible under Article 25(3)(b), for
8 sentencing purposes, the Chamber will have already found that Mr Yekatom was in a
9 position of authority within his group, that he instructed others to act or to refrain
10 from doing so as to commit a crime which occurred or as regards its attempted
11 commission, that his instruction had a direct affect on the crime's commission - and
12 again this is not limited to just its execution - both the subjective and objective
13 elements, that he issued the order or instruction with the requisite intent and
14 knowledge regarding the resultant crime. Mr Yekatom's conviction of the charges
15 thus entails that the Chamber would have found ample evidence of his substantial
16 participation in the commission of the charged crimes as well as a high degree of
17 criminal intent and knowledge.

18 Besides criminal responsibility arising from his participation in a common plan with
19 the members of his command and his issuance of orders in the perpetration of crimes
20 within its scope, the essential nature of Mr Yekatom's contributions is also inherent to
21 and derive from his position as the leader of his Anti-Balaka group, a position which
22 he enforced, a position which he never tempered, and a position that he exploited.
23 You'll recall his 2016 interview outside the Socatel building in Mbaïki, not far from
24 where Djido Saleh was brutally lynched and murdered in 2014, in which he describes
25 himself as the leader of the Anti-Balaka of the south. That's at CAR-OTP-2118-0415.

1 Not the so-called RFACPP that was referred to only recently by the Defence in this
2 case, but the Anti-Balaka. It's a position which he held out in several documents that
3 he signed and issued, including this one.

4 This is the document that he signed in respect of the demobilisation of 153 children
5 within his group.

6 Yekatom relished his position as the ultimate authority in his group. It was a
7 position he never relinquished for a moment during the charged events and one that
8 he asserted through different means, including violence. He held a position of
9 responsibility in the conduct of his group, including their crimes. He cannot walk
10 that back now, as his submissions clearly seem to try to do.

11 Mr Yekatom's leadership of his Anti-Balaka group was not imposed on him. It was
12 not an obligation, legal or moral or military. It was never a requirement. On the
13 one hand, the Defence argues that Mr Yekatom had no military station during the
14 charged period. On the other, they seek to minimise or excuse his involvement in
15 the 5 December Bangui attack as merely following the orders of his military superior
16 Captain Charles Ngrémangou, an order he could have, and indeed should have,
17 refused knowing that his vengeful elements and commanders would commit
18 retributive violence against the Muslim population.

19 He had no military station, he was not bound to follow any order, but he chose to and
20 he did.

21 His leadership over his criminal Anti-Balaka group was his choice and his alone, as
22 was his decision to lead his group in the attack of civilians.

23 Mr Yekatom's involvement in the commission of crimes of his group was, likewise,
24 intentional. The evidence is that his choices were deliberate and he made them in
25 full knowledge that the elements and commanders who he accepted in his group and

1 formed a part of it, including his military colleagues and commanders, were openly
2 motivated to exact retributive revenge against Muslims.

3 You saw the videos that we played during our closing submissions. Those are his
4 men. His elements were true to their words and gestures in committing the charged
5 crimes, and they, moreover, did so over an extended period of time with Mr Yekatom
6 at the helm the entire time.

7 His elements committed crimes well within the scope of violently targeting Muslim
8 civilians, as his standing orders also reflected. Those orders included that the
9 purpose of their training was, quote, "so they could kill Muslims and Selekas because
10 all Muslims were Seleka". End quote. That's the testimony of P-1339, transcript
11 reference 152, page 10.

12 Mr Yekatom remained not only in command, which he exercised; but, through his
13 conduct, acts and omissions, he clearly intentionally contributed directly to the
14 perpetration of their crimes. The evidence of Mr Yekatom's high degree of criminal
15 participation and intent does not get clearer than the following:

16 Mr Yekatom's and his commanders' direct and express orders to kill Muslims and
17 civilians. I'm sure you recall the testimony of P-1839 and P-1339.

18 His acceptance of elements within his group who, without sanction or any fear of
19 sanction, openly described driving Muslims from their homes and killing them,
20 including babies. That one you have on video.

21 His acceptance and tolerance of members of his group who tortured and beat
22 abductees at the Yamwara school and their murder of one, encouraged by his deputy.

23 His acceptance and tolerance of elements who participated in the notorious and
24 brutal lynching and murder of a Muslim public official in Mbäiki, Djido Saleh.

25 His creation and perpetuation of a climate of impunity in his group in which the

1 crimes committed by his elements were not merely inevitable but encouraged.

2 I refer you to paragraph 660 of our closing brief regarding the torture of Saint-Cyr

3 Lapo N'Gomat, or paragraph 702 and following regarding his group's pervasive

4 cleansing of the PK9 axis of its Muslim inhabitants as an example.

5 The list goes on.

6 Mr Yekatom's high degree of intent and participation is also shown by the evidence

7 that proves the enumerated contributions set out in the confirmation decision; namely,

8 his structuring, training and equipping of his Anti-Balaka elements, his preparing of

9 attacks and advances and leading his group in them, his issuing orders to Anti-Balaka

10 members, including patently illegal instructions.

11 All of this conduct demonstrates a profound degree of participation and intent in

12 respect of the numerous crimes for which he is responsible.

13 This is moreover underscored by the fact that as a trained member of the FACA,

14 *Forces Armées Centrafricaines*, which the Defence acknowledges, Mr Yekatom was

15 versed on the basic tenets of international humanitarian law which, among other

16 things, forbids targeting civilians.

17 Importantly, Mr Yekatom's disregard of his fundamental training as a soldier

18 underscores that his acts and conduct were deliberate, they were intended, they were

19 purposeful, and his tolerance of members and commanders in his group who, not

20 unlike him, ordered that Muslim civilian men and women be killed was likewise an

21 obvious contravention of his training, a training which should have seen him take

22 action to protect the Muslim civilians in his zones of responsibility. He did the

23 opposite.

24 His Defence seeks to argue that Mr Yekatom's, quote, "commitment to military

25 values", end quote, at paragraph 16 of their submission, provides a framework for his

1 conduct during the charged period in the Chamber's assessment of his individual
2 circumstances. Your Honours, even a partially genuine commitment to FACA
3 military values would not have seen the pervasive and violent crimes against civilians
4 committed by his group and for which Mr Yekatom is justifiably responsible.

5 The Defence's suggestion that Mr Yekatom worked towards the promotion of peace,
6 at paragraph 1 of their submission, is an affront to the enumerable victims of the
7 crimes committed by his own Anti-Balaka group under his leadership.

8 In view of the facts provided in this case, it is an astonishing claim, one that stands
9 commonsense and logic on its head and one roundly refuted by the overwhelming
10 evidence introduced in this trial to the contrary, including testimony from several of
11 his own elements.

12 Indeed, in the commission of the charged crimes there can be no question that
13 Yekatom's conduct contributed to the immense victimisation of and suffering inflicted
14 on the Muslim community in his zones of responsibility. The suggestion that he
15 promoted peace does not accord with reality. Even if it did, it in no way attenuates,
16 much less negates, the extensive participation and intent that his conduct in respect of
17 the crimes plainly demonstrates.

18 Contrary to the Defence's submissions, Mr Yekatom's conduct during and after the
19 relevant period only reinforces his reputation for extreme violence. Aside from the
20 charged crimes, with the exception of recruitment of children under the age of 15,
21 they were inherently violent. Yekatom also displayed a propensity for serious
22 violence. He murdered two of his own elements, both members of the FACA, Oscar
23 Seda and Vianney Kobola. His violence instilled such fear that his elements were
24 even too afraid to report this to the police after the events. Yet, he argues in his
25 submissions that he has no convictions and a clean military record.

1 The Chamber heard the testimonies of P-1339 and P-1839, both significant insiders in
2 this case, both of whom broke down before this Chamber during the course of their
3 testimony.

4 P-0487 was candid about his complete fear of repercussions in testifying against this
5 accused. I mentioned this previously. What you have seen of Mr Yekatom sitting
6 quietly in this courtroom throughout these proceedings is not the same Mr Yekatom
7 who was active in the field in 2013 and 2014. But you caught a glimpse of that
8 person when he was arrested in the Central African Republic in 2018. His arrest
9 occurred before the Central African authorities were even notified that a warrant for
10 his arrest had been issued by this Court.

11 I'd like to show you what that duly elected reconciliation advocating, peacemaking
12 parliamentarian Alfred Yekatom looked like in late 2018 compared to now. We will
13 need a sight translation for this video because the transcript is unavailable. But it is
14 in French, so it should be well understood by the accused and pretty much everyone
15 here.

16 PRESIDING JUDGE SCHMITT: [10:08:24] Yeah, please play it.

17 (Viewing of the video excerpt)

18 THE INTERPRETER: [10:08:49](Interpretation of the video excerpt)

19 "One of the favourites is finishing his speech and shots ring out. It is well known
20 that one is not allowed to bring a firearm into the National Assembly.

21 Journalist: Alfred Yekatom, nicknamed Rombhot, a former Anti-Balaka militiaman
22 and now a member of parliament. This MP doesn't even know himself.

23 I put up my arms -- inaudible. He let me.

24 What we do know is that Rombhot was close to the former speaker of the National
25 Assembly. One thing for sure, the speaker of the National Assembly is carrying out

1 his duties in a rather tense atmosphere.

2 This is very serious. There was an attempt to murder someone in a country.

3 Journalist: One of the favourites is about to finish his speech." End of recording.

4 MR VANDERPUYE: [10:10:25] I think we have our translation there. First of all,
5 thank you very much to the interpreters.

6 PRESIDING JUDGE SCHMITT: [10:10:31] Indeed. Indeed, that was very flexible
7 and we appreciate it. Thank you so much.

8 MR VANDERPUYE: [10:10:36] Your Honours, Mr Yekatom's reputation for violence
9 is well known and it is well founded. It is now and it was then.

10 Even his first Defence witness, D-5015 admitted reluctantly that he did not want
11 Yekatom to come to Mbaïki for fear that he would make war.

12 Mr Yekatom's propensity for violence is a circumstance that the Chamber not only
13 should, but must consider in assessing the propriety of any sentence to be imposed.

14 Moreover, it should consider the same in respect of the likelihood that the sentence
15 imposed will be an effective deterrent not only to others, but to Mr Yekatom himself
16 to refrain from the type of violent conduct that has resulted in the marked crimes
17 committed by him and his elements.

18 Apart from the retributive targeting of Muslims pursuant to the common plan
19 implemented by his group, Mr Yekatom is also responsible for the recruitment of
20 children under age 15.

21 The Chamber has heard the testimonies of many witnesses, including P-2476, P-1974,
22 P-1839, P-2018, P-1813, P-1716, among others, all of whom establish Mr Yekatom's
23 substantial intent and participation in the recruitment of children under the age of 15
24 into his Anti-Balaka group either directly or inferentially.

25 Notwithstanding the many allegations made by the Defence concerning count 29,

1 which we will not address in this context as they do not pertain to the question of
2 sentencing, but whether Mr Yekatom should be convicted in the first place, the fact is
3 that harm was caused to these children by virtue of their recruitment into his armed
4 militia whatever the motive, whatever the purpose and whatever the period.

5 A violation of the Statute does not require that the recruitment be for any given
6 purpose or any period and a violation of the Statute warrants punishment.

7 The Statute's prohibition on the recruitment or use of children under age 15 in an
8 armed group is normative.

9 It proscribes the risk of harm inasmuch as it does an actual harm. Undoubtedly, the
10 true extent of the harm suffered by such children may be latent, as might occur with
11 psychological trauma or even community stigmatisation. Conversely, the harm may
12 be more immediate, such as might result from stripping the child of their otherwise
13 protected status, which the Yekatom Defence acknowledges. Or the risk of harm
14 may arise through exposing a child to potential attack while present at the base of the
15 militia or elsewhere, such as at roadblocks, which the evidence clearly shows
16 occurred in this case.

17 You have the testimony and reports of experts in the field who explain these and
18 other risks in respect of the recruitment of children into armed groups in CAR,
19 including in the context of the Anti-Balaka.

20 Their expertise also addresses how children may be exploited in the context of their
21 enlistment and recruitment, as well as how children involved in such groups may
22 experience trauma, loss of schooling, social stigmatisation including within their own
23 families. They may be faced with uncertainty about their future, particularly given
24 that the networks of their former leaders often remain intact and active where they
25 live.

1 As you know, the expert reports particularly note the potential psychological impact
2 of child recruitment, including from witnessing extreme violence, and their own
3 exposure to violence within the ranks of the group whether through treatment as
4 adults, the imposition of discipline or active participation in violent acts. In that
5 respect I would refer you, for example, to paragraph 683 of our closing brief.

6 The expert testimony and reports also explain projected longer term effects from the
7 lack of long-term support and individual follow up, the persistence of indoctrination
8 in their attitudes towards the former enemy of the group, as well as their continuing
9 loyalty towards the group's principals, who retain influence over them and their
10 families.

11 Contrary to the Defence's suggestion, the evidence is that Mr Yekatom abused the
12 power he held over his group within the meaning of Rule 145(2)(b)(ii).

13 The Defence's argument that because he was no longer an indentured FACA member
14 during the charged period he could not have abused his authority or power on an
15 official basis is specious at best.

16 A military hierarchical relationship is not a prerequisite to demonstrating an abuse of
17 power within the meaning of Rule 145. It is not even a prerequisite of issuing
18 criminal orders.

19 THE INTERPRETER: [10:15:55] Excessive speed.

20 MR VANDERPUYE: [10:15:56] Rather, all that's required is that the Chamber will
21 have found --

22 PRESIDING JUDGE SCHMITT: [10:15:58] Mr Vanderpuye, slow down a bit.

23 Please slow down a bit. The interpreters would like to follow. And, you know,
24 English is also a bit quicker in -- than other languages.

25 MR VANDERPUYE: [10:16:09] Yes. Thank you, Mr President.

1 All that is required - and the Chamber will have found on conviction in accordance
2 with the overwhelming evidence in this case - is that Yekatom held a position of
3 authority within his group which would compel the perpetrator's commission of the
4 crimes on his order. You have that evidence amply in the record before you.
5 The suggestion that Yekatom was not a FACA member after the Seleka's arrival is not
6 relevant to his abuse of power in leading his Anti-Balaka group, and it is, in any case,
7 also contradicted by the evidence. You need only look at the footage from Mbaïki in
8 which he dons his uniform - fatigues, boots, beret, sidearm, insignia and all - to see
9 that that is exactly how he sought to portray himself and his commanders when it
10 was convenient. Notwithstanding that, as the Defence now concedes, he did
11 not -- quote, "did not hold any official military title or role during the charged period."
12 End quote. That's at paragraph 28 of their submission.

13 Let me turn to Mr Ngaïssona.

14 Mr Ngaïssona participated in the crimes as an accessory. He contributed to their
15 commission with the intent and knowledge applicable to the modes of criminal
16 responsibility under Article 25(3)(c) and (d).

17 While the case against Mr Ngaïssona was confirmed on this basis, the confirmation
18 decision does not suggest that Mr Ngaïssona did not participate in a common plan.
19 Rather, the Pre-Trial Chamber's legal determination was that on the limited evidence
20 before it at the preliminary stage of these proceedings, his contributions were not seen
21 as essential. The Defence's suggestion that Mr Ngaïssona, quote, "is not alleged to be
22 part of a common plan", end quote, at paragraphs 9 and 17 of their submission, is in
23 error.

24 While his contributions do not lead to his responsibility for the crimes as a
25 principal - that is, as one who committed them - to be sure Mr Ngaïssona is alleged to

1 have agreed with others to engage in a course of conduct which entailed the targeting
2 of Muslim civilians, a crime under the Statute. In short, a common plan. And the
3 evidence at trial amply demonstrates this and thus goes to the degree of his criminal
4 intent and participation as well as his motive in respect of the Anti-Balaka's crimes.
5 That his contributions were not characterised as essential by the Pre-Trial Chamber in
6 advance of the trial does not change the fact that the admissible evidence at trial
7 showing Mr Ngaïssona's knowing participation in a criminal plan is entirely relevant
8 to the nature and extent of his involvement in the Anti-Balaka's crimes and to any
9 corresponding sentence.

10 Mr Ngaïssona's participation in the plan to reclaim power along with Bozizé,
11 Bernard Mokom, Maxime Mokom and others, which entailed the commission of
12 violent retributive crimes against Muslim civilians goes to the degree of his
13 participation and intent regarding the perpetration of such crimes in its
14 implementation.

15 Let me add by the way that the confirmation decision never addressed to any extent
16 whether the crimes would have been committed in a significantly different way
17 absent Mr Ngaïssona's several contributions.

18 That, however, is an entirely appropriate analysis of the evidence that this Chamber
19 may undertake in determining and fixing an appropriate sentence in view of the
20 nature and extent of his participation in the commission of those crimes.

21 That Mr Ngaïssona's several contributions were not assessed under liability as a
22 principal in no way constrains the Chamber from holistically assessing their effect on
23 the Anti-Balaka's capacity to carry out the crimes, particularly in respect of their
24 attacks on Bangui and Bossangoa and their aftermaths.

25 As the Pre-Trial Chamber recognised, and the evidence has proved in this case

1 beyond any doubt, these attacks were essential components of the strategy of Bozizé's
2 inner circle and supporters to reclaim power. That's at paragraph 111 of the
3 confirmation decision, and the evidence in this case confirms this.

4 Mr Ngaïssona was indisputably part of Bozizé's inner circle.

5 As Alfred Ngaya, his eventual political adviser in the Anti-Balaka coordination
6 pointed out -- a person with whom he was in contact, by the way, in June, already, of
7 2013, throughout the charged period. What he said was Ngaïssona was,
8 quote -- rather, "Ngaïssona was the right-hand man -- one of the right-hand men of
9 Bozizé." End quote. That's at CAR-OTP-2093-0010, paragraph 62 of his statement.

10 He is one of many witnesses who attest to their close association -- P-1847, P-2625,
11 P-801, P-884. The list is extensive.

12 As noted, our submissions regarding Mr Ngaïssona, just like those concerning
13 Mr Yekatom, presuppose his conviction of the crimes with which he's charged, and
14 the Chamber's predicate findings in respect of the modes of liability underpinning
15 those, Article 25(3)(c) and Article 25(3)(d). And although those facts which underpin
16 the basis of liability are not aggravating in themselves, they are important to the
17 Chamber's assessment of the degree of Mr Ngaïssona's participation and intent, and
18 his involvement in the crimes, which we believe justify the 20-year term that we
19 recommend.

20 A finding of criminal responsibility under Article 25(3)(c) in this case presupposes
21 that the Chamber has found the following predicate facts: Mr Ngaïssona assisted in
22 the commission of the charged crimes; that he acted for the purpose of facilitating
23 them; and, that he had the requisite intent and knowledge pertinent to that of an
24 accessory in the commission of those crimes.

25 The Chamber would have found, as the evidence shows, that through his several

1 contributions Mr Ngaïssona assisted in the commission of the charged crimes,
2 whether practically, such as by facilitating the provision of the means for their
3 commission, or by providing moral or psychological support, including through acts
4 which encouraged their commission.

5 Again, let me emphasise that a contribution to the commission of crimes must be
6 understood to encompass any phase of the commission of a crime, subjective and
7 objective. Nothing in the Statute suggests that it be restricted simply to the
8 execution phase in the commission of a crime.

9 Similarly, a finding of criminal responsibility under Article 25(3)(d) in this case
10 subsumes that the Chamber will have found the following predicate facts: Mr
11 Ngaïssona contributed to the commission of the crimes by the Anti-Balaka, a group
12 acting with a common purpose; that the Anti-Balaka -- that his contributions were
13 made with the aim of furthering the criminal activity or purpose of the group or in the
14 knowledge of the group's intention to commit the crimes; and, that he acted with the
15 requisite intent and knowledge as an accessory regarding the perpetration of those
16 crimes.

17 In determining an appropriate sentence, the Chamber will have already satisfied itself
18 of Mr Ngaïssona's culpability. As such, that he contributed to the commission of the
19 charged crimes at any stage. The Chamber will have found that he did so with the
20 aim of furthering the criminal activity or common purpose of the group. That is, he
21 acted to promote the practical or ideological objectives of the group. Or that he
22 made his contributions to the group's commission of the charged crimes aware of its
23 intent as a collective to commit them. Consistent with Article 30(2).

24 The evidence in this case establishes Ngaïssona's substantial participation in the
25 Anti-Balaka's commission of the charged crimes pursuant to this mode of liability.

1 His contributions were pervasive, they were consistent and they were continuing
2 throughout the charged period.

3 His intent to achieve his own and the group's objective to obtain power in the Central
4 African Republic were unrelenting, and the evidence proves that he proved them
5 single-mindedly without regard to the human cost.

6 In assessing the extent of Mr Ngaïssona's participation, the Chamber must not look to
7 the nature of the contribution alone, but, importantly, to its impact or effect on the
8 commission of the crimes, whether its subjective or objective elements. For instance,
9 providing money or ammunition to facilitate a crime may assist in its commission
10 insofar as these may comprise logistical support in its execution. But making money
11 and ammunition available, even if they are not used, can also encourage the actor's
12 impetus to commit the crime in the first place. A single type of contribution may
13 affect the commission of a crime in different ways, but equally culpability, and thus
14 bears directly on the extent of the accused's accessorial participation.

15 As you know, a defendant's assistance in the commission of a crime need not have an
16 effect on its execution. As such, it suffices that the contribution affected any phase of
17 its commission.

18 There is no reason why, for instance, contributing to the implementation of a criminal
19 policy is any less serious than contributing to the physical execution of the crimes
20 committed pursuant to that policy.

21 In convicting Mr Ngaïssona as an accessory, the Chamber would have found that he
22 contributed to the commission of the Anti-Balaka's crimes for the purpose of
23 facilitating their commission and/or that he did so with the aim of furthering the
24 criminal activity of group, or in the knowledge of group's intention to commit the
25 crimes.

1 These are significant factual predicates that necessarily go to the nature and extent of
2 Mr Ngaïssona's involvement, and the Chamber's determination of an appropriate
3 sentence corresponding to the gravity of his individual conduct in respect of these
4 very serious, serious crimes.

5 The crimes are of a nature such that contributing to their commission to any extent, let
6 alone doing so for the purpose of facilitating them, or aware that the perpetrator
7 group intended to commit them or to further the criminal activities of that group, is
8 extremely serious, and it reflects a high degree of criminal participation and intent.

9 As you know, in the Charles Taylor case before the Special Court of Sierra Leone,
10 Mr Taylor was found guilty of aiding and abetting the Revolutionary United Front,
11 the RUF, in all 11 charges that he faced, which included murder, rape and pillage.
12 Mr Taylor asserted, among other things, that he was a peacemaker. Imagine it. The
13 chamber rejected that evidence, finding that while he publicly supported the peace
14 process, he privately undermined the negotiations supporting the RUF through
15 financial, operational and moral support. He was thus found responsible for aiding
16 and abetting their activities as well as planning attacks, as an accessory. Although
17 he was convicted, he was sentenced to 50 years, which was affirmed on appeal. And,
18 notably, that Appeals Chamber found error in the trial chamber's statement that
19 "aiding and abetting as a mode of liability generally warrants a lesser sentence than
20 that to be imposed for more direct forms of participation".

21 That's at the -- that appeals judgment -- can I give you the reference anyway. It's at
22 paragraph 666, SCSL-03-01-A.

23 That Appeals Chamber found that the totality principle which applied in that court's
24 framework, which is similar to that enshrined under our Article 78 and Rule 145, was
25 that the sentence must reflect the gravity of the accused's actual conduct and that a

1 hierarchy of gravity among the forms of criminal participation is contrary to the
2 essential requirement of individualisation.

3 This Court's Appeals Chamber similarly recognised, and I quote: "... the Court's
4 legal framework does not indicate an automatic correlation between the person's form
5 of responsibility for the crime/offence for which he or she has been convicted and the
6 sentence, nor does it provide any form of mandatory mitigation in case of conviction
7 as an accessory to a crime/offence."

8 That is the Bemba Appeals judgment, number 2276, at paragraph 60.

9 Yet, the contrary is implicitly advanced in Mr Ngaïssona's written submissions,
10 notably at paragraphs 8 through 10, 12 through 13, in which they argue that he had
11 no direct involvement, his acts were of marginal significance, or his contributions
12 peripheral.

13 As the evidence has proved in this case, Mr Ngaïssona's culpable conduct in this
14 respect far predated the 5 December 2013 Anti-Balaka attacks on Bangui and
15 Bossangoa. It extended back to the origins of the engagement of the Anti-Balaka by
16 Mr Bozizé and his inner circle in this conflict long before. In this respect, I refer you
17 to our closing submissions on his criminal responsibility in particular, as well as our
18 trial brief, at paragraph 660 and following, and also our closing brief which spells this
19 out.

20 As we submitted, the evidence shows that Mr Ngaïssona had a choice whether or not
21 to involve himself with Bozizé's hate speech and disinformation. He had a choice
22 whether to involve himself with Mr Bozizé's return to the so-called constitutional
23 order through means that were inherently criminal. He had a choice whether or not
24 to involve himself in galvanising and coordinating the affairs to that effect. He had a
25 choice whether to withdraw or renounce his involvement with the group. In each

1 instance he chose to be a leader in the group. He chose to assist, to contribute, to
2 coordinate, to instruct, to fund, to liaise, to encourage and to lend support, moral and
3 practical.

4 Mr Ngaïssona did this despite the fact that the Muslim civilians in his country would
5 be and were being indiscriminately and unapologetically targeted in western CAR by
6 the group that he helped to coordinate and ultimately came to lead, while his crimes
7 were ongoing or continued to be being perpetrated no less. Contrary to the
8 Defence's arguments, in their submissions at paragraph 13, Mr Ngaïssona's
9 contributions to the Anti-Balaka were not of marginal significance. Had they been,
10 he would not have found himself at the helm of the group throughout the charged
11 period. The evidence is that he was a recognised leader, one of great influence and
12 efficacy in consistently promoting the interests and objectives of the group, whether
13 politically or operationally. He was directly involved in the Anti-Balaka operations
14 and in contact with the group's military leaders and ComZones.

15 Mr Ngaïssona's role in respect of the formation of the Anti-Balaka was key. The
16 evidence establishes his abiding intention to achieve the political ends for which he,
17 along with Bernard Mokom, Maxime Mokom, Bozizé and others within Bozizé's circle,
18 sought to instrumentalise the Anti-Balaka elements, fully aware of their intention to
19 exact violent retribution against Muslims who they held collectively responsible for
20 the Seleka and the Seleka's crimes. There can be no doubt about that.

21 The evidence shows that Mr Ngaïssona sought to advance the practical and
22 ideological objectives of the Anti-Balaka.

23 The Chamber has before it the testimony of several witnesses who substantiate his
24 involvement in the formation of the group and in its operations thereafter, including
25 in respect of attacks carried out not only as charged, but other Anti-Balaka attacks

1 committed in western CAR within the same context of the group's Article 7 attack
2 between 2013 and 2014.

3 Bouar is one such example, and I refer to you our closing brief at paragraphs 111, 131,
4 153 and following.

5 He engaged with ComZones, Achilles Godonam, with Amadou Ndale, and helped to
6 recruit and coordinate elements to support the October 2013 Bouar attack, the archers,
7 led by Ndale.

8 As P-2841 noted, quote:

9 "Bernard Mokom and Ngaïssona were starting to organise the Anti-Balaka and also
10 the military, but at that point it was a matter of wait and see."

11 That's at CAR-OTP-2127-4238, at page 4258, paragraph 117.

12 He continued, quote:

13 "Ngaïssona undertook to go to the border, personally, to take charge and push things
14 forward".

15 Same statement, paragraph 110.

16 P-2763 explained that, quote:

17 "Ngaïssona wanted to be a leader. The goal of Ngaïssona's group was also to take
18 power".

19 CAR-OTP-2127-6435. And there are several paragraphs: 132, 153, 155 and so on.

20 You have the statement.

21 As you know, the Bouar attack resulted in the deaths of some 20 civilians, but also the
22 displacement of about 10 000 people, and it followed the attacks on Bossangoa
23 between 6 and 9 and on 17 September 2013.

24 Here you see Ngaïssona responding to Mr Ngaya, confirming that there are men on
25 the ground manoeuvring and asking what he can do - that is, Ngaya - to accentuate

1 the degradation of the situation in Bangui and elsewhere.

2 Beyond this you have CDR evidence which reflects his contacts with the Gobere

3 chiefs, including Dedane, and his provision of money to the Gobere group and to

4 Godonam's elements to fight in Bossangoa. You have the testimony of the several

5 insider witnesses to the same effect.

6 His involvement was not peripheral or marginal.

7 Beloko is another example, on 20 January 2014. And I refer you again to our closing

8 brief at paragraph 266. You have the testimony of P-1719 in that respect. You also

9 have the evidence of P-1847, who said, and I quote, in French:

10 (Interpretation) "The ComZone of Bouar, namely Ndale, confirmed that this attack of

11 Beloko, and added that he himself was prepared to attack Bouar, which was a Seleka

12 base, following the instructions of Bernard Mokom and Ngaïssona, in particular after

13 their meeting in Yaoundé."

14 (Speaks English) End of quote.

15 That's at CAR-OTP-2061-1534 at paragraph 142.

16 There's really not much doubt about Mr Ngaïssona's substantial participation not

17 only in the formation of the Anti-Balaka - that is, in respect of their galvanisation and

18 instrumentalisation - in order to carry out the plan of Bozizé and his inner circle, but

19 also his involvement in the operations of the group. What the evidence proves is not

20 someone who was remote - contrary to the Defence, paragraphs 8 and 19 - but,

21 instead, a person who was active and involved, and substantially so.

22 Again, take a look at this one. This is an email from 7 October 2013. You've seen it

23 before in which Mr Ngaïssona is seized with a request to facilitate the purchase of

24 weapons, *cartons*. And you can see the locations.

25 Take a look at this next one from 12 October 2013: "*Besoins Zone Sud*". Same thing.

1 Same story.

2 Take a look at this next one.

3 This is Mr Ngaïssona transmitting these requests to Eric Danboy, Bozizé's close
4 protection lieutenant.

5 When we closed in December, I posed the question, why would Ngaïssona be
6 involved with this -- a football chief. I expected to see a plausible response in the
7 Defence's submissions. So I looked for it and there wasn't one.

8 Your Honours, this is not what a person having only a peripheral or marginal role in
9 a militia does, contrary to the Defence's submissions. It is what a coordinator does.

10 This is how a coordinator participates. You have that evidence before you.

11 P-2483 testified, and I quote, "everybody knew that Mr Ngaïssona was the
12 coordinator of the Anti-Balaka". That was already in October 2013.

13 P-0884 testified, quote, "everybody knew that they" - that is, Ngaïssona and
14 Bernard Mokom and others - "were in Cameroon and that they were setting up a
15 resistance structure".

16 P-2841 testified, quote, "as the Anti-Balaka advanced on the ground and were taking
17 over a number of cities [...] it was understood that he [Ngaïssona] would be the one in
18 charge of resources, mobilising resources and that resources should be transferred
19 through him". End quote.

20 P-1847's evidence is, and I'll quote it in French:

21 (Interpretation) "Sometimes also Ngaïssona and Bernard Mokom carried out transfer
22 of money to the Anti-Balaka in the CAR by Express Union. Ngaïssona, as regards
23 him, used his younger brother to carry out transfer of funds for the destination of
24 Garam-Boulaï and also for Bangui".

25 (Speaks English) That's at paragraph 16, CAR-OTP-2061-1534.

1 He continues, quote:

2 (Interpretation) "Ngaïssona gave money to father Mokom or Fred Serefio who, in
3 their turn, transmitted it to the Anti-Balaka troops".

4 (Speaks English) CAR-OTP-2122-8251, at paragraph 115.

5 He also said, quote:

6 (Interpretation) "Ngaïssona controlled and checked that the money which he had
7 transferred to the fighters arrived at the proper destination and was used for the
8 purpose that were projected, for example the purchase of ammunition."

9 (Speaks English) That's at CAR-OTP-2061-1534, paragraph 112.

10 And, finally, quote:

11 (Interpretation) "Ngaïssona gave explicit orders and attack plans to other
12 Anti-Balakas who remained on the ground in CAR and did this via telephone."

13 (Speaks English) And that's also at paragraph 112.

14 Take a look at this document. I also showed you that before. This was a document
15 that was attached to an email sent to Mr Ngaïssona by the so-called *Franclin Franclin*.

16 As you can see, the document concerns military needs, as the email describes.

17 This is Ngaïssona's response: Add "*les articles de chasses*" and financial requirements
18 for the Anti-Balaka.

19 This is in January. This is before he comes back from Cameroon. On the evidence
20 you have before you, it is clear that these *articles de chasses*, for the Anti-Balaka, means
21 ammunition, for the improvised and artisanal weapons, the ones that you know, and
22 the evidence shows, were used to carry out crimes and attacks in western CAR.

23 The only thing that explains this is Ngaïssona's substantial participation in the events,
24 which include the Anti-Balaka's commission of crimes during the course of its
25 extensive Article 7 attack on Muslims in the western Central African Republic. Proof

1 of his substantial participation and intent do not require that his contributions to the
2 logistical and organisational capacity of the group be such that without them the
3 group could not carry out the attacks or the resultant crimes. They do not require
4 that his assistance or support be used in the 5 December attacks and the aftermath,
5 which is what I was describing before in terms of the effect of the contributions. It
6 does not require that his assistance "gave the Anti-Balaka movement a military
7 advantage" or influenced the decision to conduct the 5 December attacks, as put
8 forward in the Defence's submissions at paragraph 13.

9 Ngaïssona's extensive involvement with and support for the Anti-Balaka is amply
10 demonstrated in this case, and it was, moreover, done in the knowledge that the
11 crimes that the group's elements would commit them, they were committing them,
12 they had committed them and they would continue to commit serious crimes. The
13 evidence demonstrates a profound degree of his criminal participation and intent,
14 albeit as an accessory to the group's violent crimes relentlessly perpetrated against
15 Muslim civilians in the western part of the country.

16 Ngaïssona's high degree of intent and participation is also shown by the evidence
17 proving his enumerated contributions as set out in the confirmation
18 decision -- namely, taking steps to structure the Anti-Balaka; financing the
19 Anti-Balaka, including for the purchase of weapons; issuing instructions to
20 Anti-Balaka members, including with regard to the 5 December attack and attacks
21 preceding it; and, liaising with Anti-Balaka members exercising key functions,
22 including Bernard Mokom and Maxime Mokom.

23 As his sentencing presupposes - Ngaïssona's conviction of the substantial crimes
24 charged, the 5 December attacks on Bangui and Bossangoa and those committed in
25 their aftermaths - it is noted that his participation extends to the planning and

1 execution of the 5 December attacks in implementing the plan to retake power,
2 including the intermediate steps taken by the group to achieve that aim. Thus,
3 although an accessory, Mr Ngaïssona's support of the group involved operations
4 lending to those seminal attacks, the group's advancement and engagement of the
5 Seleka en route while committing serious crimes along the way.

6 The Ngaïssona Defence argues that Mr Ngaïssona did not, quote, "did not possess
7 direct intent for any of the crimes charged". End quote. Paragraph 17 of their
8 submission.

9 First, the evidence at trial completely refutes this, and, in any case, it doesn't really
10 matter when you consider not only the totality of the gravity of his conduct and
11 contributions, but their effect on the continuation of the Anti-Balaka's commission of
12 crimes pursuant to the group's organisational policy, a policy which the evidence
13 shows Mr Ngaïssona had a hand in fostering and perpetuating, along with other
14 members of Bozizé's inner circle.

15 You saw the Anti-Balaka's criminal policy at work as expressed by elements
16 themselves during the trial and in our closing statement. It's on video. It's in print.
17 And there's ample evidence of Ngaïssona's full awareness of the animus which
18 pervaded the group of which he was a part -- an animus, as the evidence shows, he
19 took part in fanning through speeches and support for Bozizé's inflammatory rhetoric;
20 through his involvement in FROCCA and the rhetoric disseminated by that group;
21 and, of course, through directly liaising with Anti-Balaka leaders and ComZones on
22 the ground, both in 2013 and in 2014.

23 The suggestion that Mr Ngaïssona did not intend that Muslim civilians be subjected
24 to the retributive violence of the Anti-Balaka does not in any way diminish the fact
25 that, with knowledge that they would inevitably be targeted, he persisted in

1 supporting the known authors of their demise in western CAR and the destruction of
2 their communities. He participated objectively and subjectively for the duration of
3 the charged period. He did so when he was in a position of influence in authority
4 not only to desist himself, but to impede the Anti-Balaka's commission of serious
5 crimes with which he now properly stands charged.

6 Article 31 defines intent within the meaning of the Statute. It provides that a person
7 has intent in relation to a consequence when they are aware that it will occur in the
8 ordinary course of events. Ngaïssona had intent within the meaning of this Article
9 at the least. He knew certainly that the crimes -- that the Anti-Balaka were animated
10 by pure vengeance against Muslims and those crimes were certain to occur. He
11 knew that as certainly as everyone around him knew.

12 As Ngaya explained, once again in his statement, quote:

13 "Muslims had to be blamed for the Seleka's conduct as they protected the Seleka.
14 That is why Muslims, and not just the Seleka, became the target of the Anti-Balaka."
15 CAR-OTP-2093-0010, paragraph 37.

16 He added at paragraph 40, quote: "On 5 December [...] the Anti-Balaka killed many
17 innocent Muslim civilians, women and children. I think that they targeted Muslim
18 civilians because when the Seleka arrived, they were friends with the Muslims and
19 they attacked non-Muslims. Therefore people felt hostile towards Muslims."

20 P-1847 acknowledged, and this is at his statement CAR-OTP-2061-1534, paragraph
21 161, and I quote in French:

22 (Interpretation) "I have to say that the Anti-Balaka committed many exactions on the
23 Muslim population during their advances. At the Anti-Balaka hierarchical level,
24 there were no sanctions which arose from these criminal activities".

25 (Speaks English) No sanctions within the group before Ngaïssona was designated

1 general coordinator and certainly none thereafter.

2 You have much more at your disposal, suffice it to say that Ngaïssona's participation
3 in the Anti-Balaka and his promotion of its aims and objectives practically and
4 subjectively are clear, and they are markedly substantial.

5 It is no accident that contemporaneous exchanges among the group's supporters and
6 people close to Bozizé and his inner circle describe his involvement particularly.

7 This is a 3 September 2013 Facebook exchange, and I've cut it down just so that you
8 can see the reference to Mr Ngaïssona. Here he's mobilising the archers. He's
9 named specifically.

10 In this next one, 14 October 2013, he's providing ammunition/medication, to the
11 archers, and he's named in this document.

12 In the next one, 23 October 2013, he's providing ammunition and Thuraya.

13 In this next one, he's sending men to the border -- PGs or GPs -- *garde présidentielle, et*
14 *des -- et des Gbaya*, firstly.

15 In this next one, 27 November 2013, Ngaïssona is managing the Anti-Balaka: *Il gère*
16 *les anti-Balaka*.

17 In this next one, 1 December 2013, Ngaïssona is providing money to deploy elements.

18 The suggestion Ngaïssona lacked intent with regard to the commission of the crimes
19 or was peripherally involved in this case is not plausible. His intent within the
20 meaning of Article 30(2) was substantial and pervasive.

21 Mr President, I have a ways to go, not a reasonable amount to go, but I don't know if
22 you want to take a break at the moment.

23 PRESIDING JUDGE SCHMITT: [10:57:37] Have you already -- do you think have
24 you a natural break now, otherwise you could continue a couple of minutes and we
25 could -- let's have the break, for example, until a quarter to 12. But I would leave it

1 to you actually.

2 MR VANDERPUYE: [10:57:50] I can go a couple of minutes.

3 PRESIDING JUDGE SCHMITT: [10:57:53] Yes, so we do it this way. Perhaps a
4 couple of minutes after 11 and then we adjust the break.

5 MR VANDERPUYE: [10:57:56] Thank you, Mr President.

6 I was just moving now to come to the gravity of the crimes, so I think I can cover that
7 in just a few minutes.

8 As I mentioned, the crimes involved in this case are inherently grave. As we noted,
9 the forcible transfer and deportation and displacement of thousands of Muslim
10 civilians, severed them from their homes, from each other, from their communities
11 and, indeed, parts of the entire country. In a word, they lost everything. Many
12 were condemned to live out years of their lives in IDP camps under constant threat by
13 the Anti-Balaka or refugee camps in neighbouring countries to which they had no
14 substantial connection.

15 Collectively, the Muslim population was subjected to acts of violence and persecution
16 on account of nothing more than a shared religion with the majority of Seleka
17 members, if that. For the Anti-Balaka, a Muslim having tea with a Seleka member
18 might be considered enough justification to be killed.

19 The violent crimes which comprise the charges in this case, particularly as against
20 persons rather than property, have taken an immeasurable toll on their victims, one
21 which can never be compensated for. The killings, torture, rape and the sheer
22 number of victims, effectively decimating the Muslim population in western CAR,
23 attest to the gravity of the Anti-Balaka's widespread attack and the many crimes
24 which comprised this campaign. The charged crimes to which the defendants
25 contributed were a substantial part of that.

1 The Chamber may and should consider the expert evidence before it, including from
2 the Stanford Human Rights in Trauma and Mental Health Program, which explains
3 how extensive the impact of these types of crimes may be and, in particular in this
4 case, particularly forcible transfer, displacement, rape, sexual violence. That
5 evidence explains, among other things, how trauma experienced by the victims of
6 such devastating crimes may be transmitted even intergenerationally. It explains the
7 psychological outcomes for victims of violent crimes, displacement, sexual violence,
8 rape. It also explains the impact of crimes regarding the destruction of culturally
9 significant property and religious sites. They're not just buildings. They note that
10 this is often overlooked in assessing trauma, although the deliberate destruction of
11 important socio-cultural infrastructure and symbols has profound psychological
12 effects. By contrast, its impact isn't overlooked by the perpetrators of such crimes
13 and has long been used as a tactic in conflict.

14 Suffice it to say that there is no plausible argument to be made, that the Defence can
15 make or that anyone can make, which diminishes the severity and gravity of the
16 crimes committed by the Anti-Balaka in the context of this case and particularly in
17 respect of the crimes to which the defendants contributed to the commission of.

18 Mr Yekatom's assertion, for example, that the return of some Muslims to Mbaïki in
19 2015 and 2016 somehow reduces the gravity of the crimes charged under counts 4, 5,
20 24 and 25 in relation to the returning victims, fails to appreciate the impact of the
21 nature of such crimes and, of course, the scope of Mr Yekatom's participation in them.

22 The same goes for the assertion that the release of the Lapo family members
23 "amounted to a single evening" as somehow suggesting a diminution of the suffering
24 that they endured. They went home. But they also went home without a family
25 member, who, according to this evidence, was peeled like a papaya.

1 The evidence, as you will recall, is that before the intervention of others, including
2 members of the Anti-Balaka, Mr Yekatom would have had those people that were
3 released killed. That is the evidence you have.

4 And you also recall, no doubt, the moving testimony of one particular witness, P-0967,
5 who after all these years, pleaded from that chair, to know where Saint-Cyr Lapo's
6 body could be found. I'm sure that that testimony haunts us all.

7 She said, and I quote:

8 (Interpretation) "I say this once again. If the Anti-Balaka commander, the person
9 responsible for the Anti-Balaka who killed Saint-Cyr Lapo, if he has been buried, I beg
10 him to tell me where the grave is."

11 (Speaks English) Transcript 200, page 11.

12 The defendants' submissions, both of them, wholly fail to acknowledge and to
13 appreciate the depth of the harm and the suffering that their actions have contributed
14 to. It is immense and it is profound.

15 Now's a good time for the break, Mr President.

16 PRESIDING JUDGE SCHMITT: [11:04:24] Okay then. Let's have the break until, as
17 already indicated, a quarter to 12.

18 THE COURT USHER: [11:04:31] All rise.

19 (Recess taken at 11.04 a.m.)

20 (Upon resuming in open session at 11.47 a.m.)

21 THE COURT USHER: [11:47:15] All rise.

22 Please be seated.

23 PRESIDING JUDGE SCHMITT: [11:47:36] Mr Vanderpuye, you still have the floor.

24 MR VANDERPUYE: [11:47:39] Thank you, Mr President.

25 Good morning, again. Good morning, everyone.

1 As we stated in our written submissions and reiterate, the evidence in this case proves
2 aggravating circumstances in respect of the acts and conduct of the defendants.

3 First, the crimes to which they contributed were fundamentally motivated by
4 discriminatory intent, an intent that they either harboured personally or were aware
5 that the Anti-Balaka elements had and acted on in committing the crimes.

6 The nature of the crimes and the discriminatory manner in which they were carried
7 out systematically by the Anti-Balaka against vulnerable Muslim civilians in western
8 Central African Republic is clear on the evidence at trial. It is irrefutable and is also
9 substantiated by the members of the Anti-Balaka themselves, the insiders who
10 appeared during the course of the trial and had the courage to admit their conduct
11 and the conduct of members of the group.

12 While the sentiment that drove the Anti-Balaka to almost unimaginable, retributive
13 collective violence against Muslims of all walks of life in western CAR on account of
14 their perceived support of the Seleka and their perceived complicity in the crimes that
15 the Seleka committed might be explainable, it is in no way justifiable, it is in no way
16 defensible, and it remains, nevertheless, discriminatory.

17 Moreover, as both the accused, Mr Yekatom and Mr Ngaïssona, had the wherewithal
18 to know this every step of the way, their own conduct in contributing to the
19 commission of such crimes is an aggravating circumstance.

20 Second, the victims of the charged crimes were particularly vulnerable and
21 defenceless against the Anti-Balaka -- women, children, elderly, unarmed civilian
22 victims. Some were killed, some raped, some tortured and beaten. Most expelled
23 through force or the threat of force, ripped from their communities with only the
24 clothes on their backs and no one to defend them.

25 Examine, if you will, the modus operandi of the Anti-Balaka attacks. They reveal a

1 deliberate targeting of the Muslim community in Bossangoa, in Bangui, in Boeing,
2 Cattin, along the PK9-Mbäiki axis, and thereafter in the continuation of the Article 7
3 attack in Yaloké, Carnot, Boda, Berberati, Guen.

4 None of this was merely incidental or opportunistic. Instead, it comprised a
5 deliberate pattern of conduct which the charged crimes and defendants' contribution
6 formed a part.

7 Third, the crimes involved a multiplicity of victims, thousands and thousands who
8 were directly impacted, and still more indirectly impacted. Their victimisations
9 lasted for a substantial period.

10 And, as we noted, the crimes were of such a nature that the interim president, who
11 you heard from in this case, was genuinely concerned about the risk that the Muslim
12 population in the Central African Republic would be no more as a result of the crimes
13 committed by the Anti-Balaka. That is one of the reasons why this case was referred
14 to the Court in the first place -- I mean, the situation.

15 Also, as we set out in our written submissions, there are no compelling mitigating
16 circumstances. Pre-trial custody is not a mitigating circumstance, contra the
17 Defence's submission at paragraph 40. The supposed lack of direct intent is not a
18 mitigating circumstance in these particular circumstances, given the breadth and the
19 number of crimes and the length -- the period of time over which they have been
20 committed. The impact of Ngaïssona's incarceration on his family is not a mitigating
21 circumstance.

22 While an effort to promote peace and reconciliation could be a mitigating
23 circumstance, if it is genuine, where public pronouncements are accompanied by
24 conduct which undermines those statements or perpetuates the group's criminal
25 agenda and activities, as was the case in Taylor and is the case here, it is decidedly not

1 mitigating.

2 The evidence is moreover that Ngaïssona's public statements regarding peace and
3 reconciliation also followed his arrest and release on condition in the Central African
4 Republic in April of 2014, conditions which he patently violated and was in danger of
5 being jailed over in October 2014. I will refer the Chamber to CAR-OTP-2003-1076 at
6 page 1110.

7 That document entitled, in French, (Interpretation) "An order for the purposes of
8 provisional release under judicial supervision" (Speaks English) is in evidence. It's
9 dated 25 October 2014 and it purports to revoke the provisional release under judicial
10 supervision of Mr Ngaïssona that was granted to him on 28 April 2014 when he was
11 arrested.

12 Notably, in that document, the *juge d'instruction* observed that Mr Ngaïssona had
13 violated all of the obligations and conditions of his release by making declarations on
14 public and on international and domestic radio stations, by being associated with and
15 in the company of men bearing arms, by holding public meetings, all of which were
16 prohibited, and that it was patent and established that he had violated his obligations.
17 You also have the testimony of P-0952, P-876, P-2328, all of whom give you insight as
18 to his participation and conduct in the face of the Anti-Balaka's continuing crimes in
19 2014, violent crimes which, as we noted, increased against the Muslim community
20 after he became the group's national general coordinator in January 2014.

21 Mr Yekatom's position is equally unavailing. His claimed efforts at peacemaking are
22 just not related -- are related, rather, only to furthering his own political ambitions.
23 Instead of acknowledging their criminal acts and taking responsibility for them, the
24 accused's written submissions set upon minimising their respective roles in the
25 Anti-Balaka's commission of the charged crimes - not unexpectedly, but that's what

1 they do - downplaying the damage of harm caused by those crimes and repackaging
2 and repainting their prior conduct to the point that it no longer bears any semblance
3 to reality, and certainly not the evidence.

4 Neither of these defendants were peacemakers. That should be obvious. Far from.
5 That is what the evidence of their participation and intent proves, overwhelmingly in
6 this case, and that you should consider in fixing an appropriate sentence.

7 The accused have never cooperated in any appreciable measure with the investigation
8 of the charged offences, or with this Court. Certainly, they have no obligation to do
9 so. However, it is worth noting that they have not.

10 It also bears reminding that an assessment of an appropriate sentence, including
11 whether it is likely to advance the defendants' rehabilitation entails an assessment of
12 their conduct while in detention.

13 I will not belabour the point, but the record of reported violations of, and attempts to
14 circumvent, the Chamber's order on the conditions of detention, particularly
15 restricting contacts while in detention, are also numerous for both accused. Let me
16 add also that neither accused has demonstrated any remorse for their culpable
17 involvement in, and contribution to, the commission of the charged crimes.

18 Of course, we recognise that they are presumed innocent and they don't need to
19 concede their responsibility. However, as their submissions demonstrate, the
20 defendants instead seek to minimise their respective roles and responsibility even
21 within the Anti-Balaka in their respective capacities, as a ComZone and commander
22 of over a thousand Anti-Balaka elements, and as a coordinator and leader of the
23 Anti-Balaka at the national level, respectively.

24 Your Honours, at the end of the day the sentence that you choose to impose will
25 reflect the seriousness with which this Court decides to treat the crimes charged in

1 this case and the contributive conduct of the defendants to the commission of those
2 crimes.

3 It will reflect the Court's consideration of the victims of the Anti-Balaka's crimes as
4 charged, their plight, their suffering, their families, their communities, all of which to
5 this day, in one form or another, endure and cannot be undone.

6 It will reflect the Court's consideration of the mandate of this institution and the basis
7 upon which it was founded.

8 The record is large, the evidence is abundant, the crimes are many, the victims are too
9 numerous to count and the degree of harm caused nearly impossible to fathom.

10 Your Honours, we commend this sentencing to you, knowing that you will exercise
11 your discretion as you should, and balance all of the relevant interests to achieve a
12 fair result.

13 Do justice.

14 Mr President, that concludes our presentation. Thank you for your indulgence.

15 PRESIDING JUDGE SCHMITT: [11:59:57] Thank you very much, Mr Vanderpuye.

16 The question is now we have -- it's only 12 o'clock. I think we can start with one of
17 the teams of the victims.

18 Ms Massidda, you are nodding. This means you will start?

19 Ms Douzima will have the floor then.

20 Just wait a second, Ms Douzima.

21 MS DIMITRI: [12:00:28] I'm sorry, Mr President. You probably noticed the
22 technician. If we could just have like a five-minute break until the technician fixes
23 my --

24 PRESIDING JUDGE SCHMITT: [12:00:37] Absolutely.

25 MS DIMITRI: [12:00:39] Thank you.

1 PRESIDING JUDGE SCHMITT: [12:00:39] So then we go outside. Please let us
2 know immediately when we continue and don't leave the room, please. Thank you.

3 THE COURT USHER: [12:00:45] All rise.

4 (Recess taken at 12.00 p.m.)

5 (Upon resuming in open session at 12.04 p.m.)

6 THE COURT USHER: [12:04:42] All rise.

7 Please be seated.

8 PRESIDING JUDGE SCHMITT: [12:04:58] Assuming that the technical problems are
9 solved, I give Ms Douzima the floor.

10 MS DOUZIMA-LAWSON: [12:05:24](Interpretation) Thank you, Mr President, your
11 Honours, for giving me this opportunity to speak to you today at this hearing on
12 behalf of the victims we represent.

13 As we indicated in our closing statements last December, the victims involved in this
14 case attach a great importance to justice and this, of course, includes the sentencing of
15 the two accused in a manner that is appropriate in light of all the relevant
16 circumstances and proportionate to the crimes suffered by the victims.

17 We do not intend to repeat our written submissions made last December. However,
18 we feel that it is important to highlight some of the most important aspects for the
19 victims we represent.

20 We will also respond to some of the arguments advanced by the parties in their
21 respective written submissions.

22 Firstly, all the parties seem to agree on the principles relating to sentencing. In fact,
23 an analysis of all the written submissions shows that the applicable rules read in
24 conjunction with the objectives of the preamble of the Rome Statute form a
25 comprehensive system to determine an appropriate sentence.

1 Under the system, the Chamber must analyse and balance all criteria contained in the
2 applicable rules and, in the exercise of its discretion, impose a sentence that is
3 proportionate to the crimes committed and the guilt of the convicted persons.

4 Furthermore, the Chamber also has discretion in assessing the relevant factors, which
5 sometimes may be appropriate to more than one criteria. For example, qualifying as
6 an aggravating circumstance, but also being appropriate to the analysis of the gravity
7 of the crime.

8 As reiterated by the Appeals Chamber, what is important is that the Trial Chamber
9 analyse all the relevant elements, avoiding double-counting of any element.

10 The parties and participants, however, differ in their opinions on the fundamental
11 objectives in determining the sentence.

12 Mr Yekatom's Defence is, in fact, trying to convince you that one of the fundamental
13 objectives is his reintegration, and that sentencing should aim to contribute to the
14 maintenance of peace and national reconciliation. Just look at paragraph 7 of the
15 submissions of Mr Yekatom.

16 Mr Ngaïssona, as far as he is concerned, maintains that the possibilities of
17 rehabilitation are exceptionally positive and that this aspect should be taken into
18 account by the Chamber in determining the appropriate sentence. See paragraphs 37
19 and 38 of the Ngaïssona submissions.

20 The victims recall that in the Court system, the fundamental objectives of sentencing
21 are retribution as an expression of the international community's condemnation of
22 crimes within the Court's jurisdiction, and deterrence, whereby a sentence must be
23 adequate to discourage repeated offences by the convicted person or any other person
24 considering the commission of such a crime. I refer to the representatives of the
25 crimes -- of the Legal Representatives of Victims at paragraph 12.

1 If rehabilitation can be seen as an objective in determining the sentence, the
2 jurisprudence recognises that it should not be given excessive weighting in the
3 context of crimes judged by the Court -- in the crimes adjudicated by the Court in
4 paragraph 10 of the Uganda case.

5 It is precisely that which the accused ask. This is not primordial as in the appeal
6 decision on the sentence in the Bemba & Ors case, in paragraph 205.

7 The victims maintain their position, which is based that an exemplary sentence is the
8 only option capable of fully acknowledging the harm they have suffered as a result of
9 the commission of the crimes and which would respect the objective of the fight
10 against impunity, whilst deterring any other person from committing the irreparable
11 acts again.

12 This finding is one of the essential considerations in determining the appropriate
13 sentence.

14 Mr Yekatom and Mr Ngaïssona attempt, both of them, to downplay the gravity of the
15 crimes by arguing that the factual basis of several of the offences is the same. We
16 refer to paragraph 13 of Mr Yekatom's submissions and paragraphs 20 to 26 of
17 Mr Ngaïssona's submissions, as well as Annex A.

18 However, the Court's jurisprudence recognises that the concurrence between war
19 crimes and crimes against humanity is permitted, since the different offences protect
20 different interests -- namely, protection against crimes committed in time of war, or in
21 the event of a systematic or widespread attack against a civilian population, an
22 innocent population. In the case of crimes against humanity, we refer to the
23 submissions of the Legal Representatives of Victims of other crimes, paragraph 21.
24 Therefore, if the crimes retained are qualified as both war crimes and crimes against
25 humanity, the victims maintain, contrary to the arguments of the Defence, that this

1 factor should be considered as accentuating the overall gravity of the crimes, rather
2 than diminishing it.

3 Mr Yekatom's Defence also attempts to downplay or reduce the gravity of the
4 deportations and forced displacement, in connection with the crimes committed on
5 5 December 2013 in Bangui, and in the towns and villages of on the PK9-Mbäiki axis,
6 by arguing that some people who were forced to leave their homes managed to return
7 to their homes, or simply to return to the CAR, thereby referring to reports dated
8 2015/2016. You will find that in the Yekatom submissions, paragraph 20.

9 The reality, however, is completely different.

10 Firstly, the evidence in the file is crystal clear, to the effect that the vast majority of
11 victims who were forced to leave their homes have still been unable, more than
12 10 years later, been unable to return. This factor must be taken into consideration
13 when analysing the gravity of the crimes.

14 Secondly, the mere fact of returning to your country of origin without being able to
15 effectively return to your own home with the same means that they had before they
16 were forced to leave, cannot reasonably be put forward as an argument for the
17 reduction in the gravity of crimes.

18 On the contrary, thirdly and finally, evidence shows that the people who managed to
19 return to their town or village, or the region of origin, experienced major difficulties
20 in re-establishing themselves and finding employment again, in particular because
21 their homes were occupied during their absence and/or looted or destroyed, and
22 because they have lost everything when they left their normal place where they lived.
23 We refer to the testimony of P-2353, P-2354, P-2389 and CAR-OTP-2104-0033-PRV.
24 As regards the destruction of the Boeing mosque, and contrary to the arguments put
25 forward by the Yekatom Defence, the fact that it may have been rebuilt or that there

1 were other mosques in the vicinity - I refer to Yekatom's submission, paragraph
2 18 - should in no way diminish the gravity of the crime resulting from the destruction
3 of this religious building. This is particularly important given the particular
4 significance for the Boeing victims that this particular mosque had, and the fact, as
5 some victims have pointed out, that the destruction of the mosque had an effect on
6 the loss of religious faith by the Muslim community. We refer to paragraph 38, 39 in
7 our written submissions.

8 As regards the degree of participation of all accused and the manner in which they
9 contributed to the crimes, we refer to paragraphs 40 to 46 of our written submissions.
10 However, and contrary to the position of Mr Yekatom's Defence, it is important to
11 remember that Mr Yekatom had absolute authority over the members of his group,
12 that he had a very close link with the crimes committed, in particular due to the fact
13 that he was directly on the ground. We refer to the Prosecution's submissions,
14 paragraphs 513 to 514.

15 The arguments according to which Mr Yekatom's involvement in the attack of
16 5 December 2013 was only the result of direct orders from
17 Mr Ngremangou - Yekatom submission, paragraph 23 - are not supported by the
18 evidence presented at trial seen in its entirety, and in no way diminish his degree of
19 participation in the commission of crimes.

20 Similarly, in the same way, the arguments advanced saying that the crimes
21 committed by the Seleka had any effect on his degree of participation, or even on his
22 guilt - I refer to Yekatom submission, paragraph 25 - must be rejected on the basis of
23 inapplicability of the principle *tu quoque* in international criminal law. In this regard,
24 recall the appeal judgment in the Martić case.

25 In fact, as mentioned by the judges in the ICTY Appeals Chamber in the Martić case,

1 and I quote in French, "[t]o the extent that Martić's argument is an attempt to plead a
2 defence of tu quoque [...] to plead that the acts for which he was found responsible
3 should not be considered as criminal because they were in response to crimes
4 committed against him and his people, [that] must be rejected. It is well established
5 in the jurisprudence of the Tribunal that this type of argument based on reciprocity is
6 not a defence mechanism against serious violations of international humanitarian
7 law".

8 Turning to Mr Ngaïssona, the latter said that he devoted a large part of his
9 submissions in trying to minimise his degree of participation by arguing, in particular,
10 that his contribution to the crimes were minimal, peripheral or, indeed, only had a
11 marginal effect on the commission of crimes.

12 However, the reality is quite different. The evidence in the case demonstrates the
13 vital role of Mr Ngaïssona in the implementation of a plan to regain power in the
14 Central African Republic by contributing significantly to the activities of the
15 Anti-Balaka, including committing crimes, by financing their activities, by providing
16 arms, by structuring the Anti-Balaka, and by keeping up to date of the activities
17 which were occurring on the ground, as demonstrated by the documentary evidence
18 submitted in this case. Here we refer to our submissions, paragraph 44, and also the
19 final written submissions, paragraph 187 to 188.

20 Mr President, your Honours, we now turn to the personal circumstances of
21 Mr Yekatom and Mr Ngaïssona and the absence of extenuating circumstances.
22 To date, neither of the two defendants has expressed remorse or sincere regret for the
23 attacks and serious crimes committed against the victims which we represent.
24 What is particularly disturbing for the victims is the attempt of the accused to present
25 themselves as defenders of peace in the Central African Republic. Indeed, they

1 present themselves as the victims, which appears to the victims as an insult.

2 Both Mr Yekatom and Mr Ngaïssona say they never have had any Muslim feelings, or
3 that they tried -- and say that they did try to contribute to peace in their country by
4 various means. Here we quote paragraph 36, 37 of the Yekatom submissions, and
5 paragraph 28 to 36 of the Ngaïssona submissions.

6 However, truth demonstrates by the extensive evidence presented during the trial
7 that this is a far cry from the image which the defendants are trying to portray of
8 themselves.

9 Contrary to the arguments put forward by Mr Ngaïssona in his written submissions
10 to the effect that he had always been an advocate of peace and reconciliation and that
11 he had taken tangible action to that end - here we refer paragraph 28 to 36 of
12 Ngaïssona - the victims maintain that the evidence in this case demonstrates the
13 contrary and shows the fundamental role of Mr Ngaïssona's role in propagating the
14 anti-Muslim rhetoric that has caused so much suffering in the country in 2013 and
15 2014.

16 The victims also challenge the arguments put forward by the Defence of Mr Yekatom
17 according to which the latter attempted to downplay the harm caused by the victims,
18 in particular by respecting the principle of distinction, or by undertaking appropriate
19 investigation in the commission of crime, or by ensuring that the civilian population
20 was not frightened by the actions of his group. Here we refer to Yekatom's
21 submissions, paragraphs 33 and 34.

22 Mr President, your Honours, the evidence presented during the trial is diametrically
23 opposed to these arguments which have been put forward by Mr Yekatom. For
24 example, no real investigation led to any consequences for those responsible for the
25 acts committed against those abducted from the Yamwara school. And with

1 Yamwara, you've heard sufficiently which was the principle basis of the Anti-Balaka
2 and led to the sordid murder of Saint Cyr Lapo N'Gomat. On the contrary, evidence
3 shows that Mr Yekatom even congratulated the perpetrator of these acts. I refer to
4 our written submissions, paragraph 114.

5 Furthermore, there is clear evidence that thousands of Muslims, civilian Muslims, had
6 to flee the advance of Mr Yekatom and his group in Bangui and along the PK9-Mbäiki
7 axis specifically because of fear of facing the reprisals by this group - I refer to our
8 written final submissions, paragraph 105, 125, 127, 129 to 130 and 132 - it being
9 understood that on the PK9-Mbaïki road there are several villages and one can see the
10 severity of the harm done. This road, PK9-Mbaïki road that we have heard about to
11 a great extent during this trial, there are many villages along this road: Zila, Samba,
12 Yamboro, Ndagala, Bimon, Kapou, Bossongo, Berengo, Bobangui, Pissa. There has
13 been much mention made of Pissa during this trial.

14 Contrary to the statements made by Mr Yekatom's Defence team, Mr Yekatom did not
15 offer true and sincere assistance to the victims of the events that occurred at the
16 Yamwara school, as they claim in their filings at paragraph 35. In actual fact, the
17 reality is that the victims continued to be terrified until they were released. They
18 feared for their very lives, some even refused to eat, and they had to move to other
19 locations because they were afraid that the Anti-Balaka elements of Mr Yekatom may
20 attack them. If Mr Yekatom had truly provided sincere assistance to the victims of
21 this event as the unchallenged leader of his group, the situation would have been
22 entirely different.

23 Concerning Mr Djido Saleh, Mr Yekatom argues that his offer to pay the burial costs
24 of this gentleman demonstrates his efforts to help the victims during the period of the
25 crimes, but in actual fact the evidence shows that Mr Yekatom never provided that

1 financial assistance. Furthermore, Mr Saleh's family was not able to attend the
2 funeral because the Anti-Balaka were present in Mbaïki, and we make reference to
3 our final written submissions, paragraph 139. Once again, if Mr Yekatom as the
4 unchallenged leader of his group had truly intended to help the family of Mr Djido
5 Saleh, the Red Cross and the MISCA would not have had to escort the group so that
6 the funeral could be held.

7 Even if the Chamber were to conclude that Mr Yekatom or Mr Ngaïssona did make
8 gestures of assistance, some kind of gestures of assistance to the victims, such
9 sporadic gestures were intended more to put a good -- were intended to make the
10 situation appear a bit better rather than truly providing assistance, not diminishing in
11 any way the seriousness of crimes that were committed, and would only have a
12 marginal effect on the sentencing, particularly in light of the harm suffered by the
13 victims.

14 No, nor can the victims remain silent when they hear the arguments from
15 Mr Ngaïssona saying that his sentence should be reduced because his family and his
16 community, including his church, suffered financial and -- a financial impact and a
17 serious psychological impact because of his imprisonment. This argument is to be
18 found in the Ngaïssona submissions at paragraph 41.

19 In this regard, the impact that imprisonment of an accused person on his family is
20 something that is recognised by international courts and cannot be taken into account
21 as a mitigating circumstance, and this is shown in the sentencing decision in the
22 Bemba *et al* decision of 22 March 2017 at paragraph 19. The decision on sentencing,
23 22 March 2017.

24 Furthermore, Mr Yekatom and Mr Ngaïssona both argue that the lack of any previous
25 conviction should be considered by the Chamber when setting the sentence.

1 Yet, in relation to this issue, the victims would refer the Chamber to the Al Mahdi
2 case and the Bemba *et al* case, in which it was concluded that the lack of a previous
3 conviction is a common characteristic of people convicted by international courts and
4 is not a mitigating circumstance. We refer you to the judgment and sentence at
5 paragraph 87.

6 As stated by the judges in the Al Mahdi case, I will quote from the French version,
7 quote, "an absence of prior convictions is a fairly common feature amongst
8 individuals convicted by international tribunals and shall not [...] be counted as a
9 relevant mitigating circumstance."

10 If I may, a few words about the joinder of Mr Yekatom's case and Mr Ngaïssona's case.
11 Each one of the accused persons is asking you to consider, when the time comes for
12 sentencing, to consider the time that they lost because of this joinder. Paragraph 38
13 of the Yekatom submissions and paragraph 39 of the Ngaïssona submissions.
14 In their mind, the time that they allegedly lost or wasted, that that time -- I beg your
15 pardon, your Honours. I beg your pardon. But Mr Ngaïssona even claims that the
16 two cases should not have been joined and the Chamber must consider the undue
17 time spent by Mr Ngaïssona in detention when sentencing. This argument is to be
18 found at paragraph 39 of the Ngaïssona submissions.

19 The victims are of the view that these arguments should be dismissed. In actual fact,
20 the jurisprudence of this Court recognises that delays are normal when cases are
21 joined and ultimately joinders serve the proper administration of justice, and nothing
22 more than that.

23 We would remind the Bench of a decision in the Gbagbo, Blé Goudé case in this
24 regard.

25 Furthermore, the jurisprudence of the ad hoc tribunals recognises that the accused

1 persons of a case that -- of cases that have been joined to form one trial benefit from
2 the same rights as if they had been -- and that the accused should not complain about
3 any such joinder. We refer you to the jurisprudence of the ICTY.

4 The victims are of the view that even though some delays were caused by the two
5 cases being joined, those delays were minimal and do not justify any reduction in the
6 sentence, considering the extreme seriousness of the crimes, the aggravating
7 circumstances and the major harm suffered by the victims of such horrific crimes.

8 Mr President, your Honours, the last time that I consulted our clients, the victims that
9 we represent, before preparing for oral pleadings regarding the sentence, all the
10 victims that we represent clearly indicated that the two accused persons should
11 receive a large sentence so as to deter any person who may be tempted to commit
12 similar crimes in the Central African Republic.

13 Indeed, allow me, Mr President, your Honours, to express the feelings of the victims.
14 They find that this country has suffered too much because of the repeated conflicts
15 that are all based on a struggle for power at any price and, unfortunately, the victims
16 are always the ones who pay the price.

17 In the view of the victims, the fact that the accused demonstrated no remorse, no
18 compassion, or sincere regret during the trial for the terrible suffering - some people
19 might even say atrocities - that they were subjected to, they find this point very
20 important and this must be taken into account by the Chamber.

21 For the victims, it is the culture of impunity that lies behind this scourge, and a
22 sentence that serves as an example will ensure that such crimes do not occur again,
23 something that all victims hope for.

24 In the view of the victims, the sentence handed down by this Chamber must be
25 proportional to the suffering that they endured, and the Judges should not be

1 indulgent when they set the appropriate sentence.

2 This point was stressed by a great many victims who are part of the proceedings.

3 These victims also stressed that up until now, the victims in the Central African

4 Republic have not been able to receive justice for the crimes committed in their

5 country, and this has been the case for decades. Such circumstances only

6 perpetrate -- perpetuate impunity and encourage such cycles of violence.

7 For all of the reasons that we have just set out, and basing ourselves on the principles

8 of retribution and deterrence, the vast majority of the victims clearly expressed their

9 desire for the Chamber to hand down a sentence that shall serve as an example. We

10 represent the victims and most of them have said 30 years' imprisonment for each one

11 of the accused. Indeed, the essential contribution made by each one of the accused

12 persons justifies them to be sentenced to the same punishment, even though they are

13 being prosecuted under different modes of liability.

14 The crimes for which they have been charged are too serious and I cannot paraphrase

15 what the Deputy Prosecutor just said.

16 This concludes, Mr President, your Honours, our submissions on behalf of the 1,673

17 victims that we represent.

18 We thank you for your attention.

19 PRESIDING JUDGE SCHMITT: [12:47:11] Thank you very much, Ms Douzima.

20 Mr Suprun, can you already foresee how long your submissions will be?

21 MR SUPRUN: [12:47:25] Mr President, I estimate that it will not take more than

22 30 minutes.

23 PRESIDING JUDGE SCHMITT: [12:47:29] I think then you should start and finish

24 that now. We give you the floor. Thank you.

25 MR SUPRUN: [12:48:08](Interpretation) Mr President, madam, and your Honours,

1 first of all, I reiterate the written submissions I made concerning a possible sentence
2 imposed on Mr Yekatom if he is found guilty of the crime mentioned under count
3 29 -- namely, the crime of conscripting and enrolment of children under 15 years of
4 age in his Anti-Balaka group and using these young people to take part in hostilities
5 actively.

6 During my remarks I will deal with a number of arguments from

7 Mr Yekatom's Defence team in their respective written submissions.

8 First of all, the Yekatom Defence argues that if Mr Yekatom is found guilty of count
9 29, the Chamber should once again evaluate the participation applications of all
10 victims who were former child soldiers within the Anti-Balaka. There are 292 such
11 people who have been authorised to take part in this case.

12 With all due respect, I argue that that request from the Defence has no legal basis
13 because there is no support for such a thing in the legal texts of the Court, nor in the
14 Court's jurisprudence. I would remind the Bench that a victim participation
15 application is a purely administrative document that is filed with the Court solely
16 with the view to allowing the Chamber to determine whether the person can be
17 allowed to take part in the proceedings at the appropriate stage as a victim, in
18 accordance with the criteria that apply.

19 I would also remind the Bench that the participation application is reviewed in
20 accordance with the standard of the prima facie level, and that is the lowest level of
21 proof.

22 But, in this case, this trial is now over and the Chamber is now determining the
23 criminal responsibility of two accused people, including Mr Yekatom, and they are
24 also considering the possible sentence to be handed down.

25 For the purposes of such a determination, the Chamber is supposed to rely on only

1 the evidence adduced during the trial. I remind the Court that in accordance with
2 the practice here at this Court, victim participation applications are not elements of
3 evidence and the Chamber is not supposed to rely on such items when making their
4 ruling under Articles 74 and 76 of the Rome Statute. So I wonder on what basis,
5 what legal basis would the Chamber reassess the applications at this stage in the
6 proceedings, these participation applications from all victims -- what's more, at the
7 highest level of proof, namely, beyond reasonable doubt?
8 Amongst the 292 former child soldiers who were victims within the Anti-Balaka
9 group and who were allowed to take part in the trial, only three victims were called to
10 give testimony before the Chamber. One victim was called by the Prosecution and
11 two victims were called by the Legal Representative of Victims. Admittedly, the
12 accounts of the three victims concerned, who gave testimony during the trial, will be
13 assessed by the Chamber according to the standard of proof beyond reasonable doubt.
14 Yet, once again, I wonder on what legal basis and for what purpose should the
15 Chamber reassess the participation applications of all the other victims who were
16 authorised to participate at this particular stage, when determining the criminal
17 liability and possible sentence to be handed down, particularly in respect of
18 Mr Yekatom?
19 According to the Defence of Mr Yekatom, this reassessment is necessary, taking into
20 consideration the serious allegations regarding so-called fabricated status of child
21 soldiers in these proceedings.
22 Yet, the role of the Chamber in these proceedings is to determine the criminal
23 responsibility of the two accused people before them -- namely, Mr Yekatom and
24 Mr Ngaïssona. In the case of a conviction, the Chamber shall hand down the
25 appropriate sentence.

1 With a view to making such a decision, the Chamber no doubt has the power and
2 jurisdiction to assess the credibility of witnesses, the probative value of their
3 testimony and the probative value of other evidence brought before the Court during
4 the trial. In these proceedings, the Chamber no doubt has the power and the
5 jurisdiction to decide in the light of the submissions from participants, including
6 allegations from the Defence. The Chamber cannot take into consideration all or
7 part of the testimony of some witnesses because of a lack of credibility or a lack of
8 probative value.

9 Yet, this Chamber, as part of these proceedings, does not have the power to establish
10 the criminal responsibility of any other person, anyone other than Mr Yekatom, for
11 the acts or omissions that relate to the alleged fabrication of status of child soldiers
12 within the Anti-Balaka.

13 Indeed, if Mr Yekatom were to be found guilty of the crime listed under count 29, that
14 would mean that the Chamber would have determined on the basis of evidence
15 produced during the trial and beyond reasonable doubt that at least one or several
16 children under 15 were enrolled or conscripted into Mr Yekatom's Anti-Balaka group,
17 or at least one or several child soldiers under 15 were used to play an active role in
18 hostilities.

19 Actions or omissions that have been alleged relating to fake child soldiers, falsehoods
20 that might have been done after the temporal parameters of this case, are of no
21 relevance when it comes to determining Mr Yekatom's criminal responsibility.

22 Secondly, for the same reason, because of the lack of any relevance to the
23 determination of the criminal responsibility of Mr Yekatom in relation to count 29,
24 and contrary to the Defence's arguments, alleged acts or omissions could not under
25 any conditions constitute a mitigating circumstance when it comes to setting the

1 possible sentence to be imposed on Mr Yekatom if he were to be found guilty of the
2 crime listed under count 29.

3 Third, Mr Yekatom's Defence argues that in the previous cases before this Court, in
4 particular the Lubanga, Ntaganda and Ongwen cases, there was a broad campaign
5 intended to recruit children in the respective armed groups, which was not the case in
6 this particular case.

7 The seriousness of the crime listed under count 29 cannot be diminished even if the
8 Chamber finds that only a limited number of children under 15 were enrolled or
9 conscripted or used to play an active role in hostilities by Mr Yekatom's Anti-Balaka
10 group. This is because we are talking about one of the most serious crimes under the
11 Rome Statute -- crimes committed against children, children being the most
12 vulnerable victims.

13 A large number of victims could be an aggravating circumstance, but a limited
14 number of victims does not diminish the seriousness of the crime in question, as such.
15 Furthermore, it should be noted that neither the Prosecution nor myself have argued
16 in our respective written submissions that there were any aggravating circumstances
17 in light of the large number of victims, the former child soldiers, who were subjected
18 to the crime listed under count 29.

19 Four, with a view to the possible sentencing, or the determination of the possible
20 sentence upon Mr Yekatom, the Yekatom Defence team argued in -- they provided
21 written statements from nine witnesses under 68(2)(b), and those statements were
22 entered into evidence. These are -- now, I must point out that some items were not
23 disclosed to the legal representatives and apparently the Defence did not provide or
24 place on the case record any identity documents for these witnesses. Consequently,
25 the identity of these people was not established properly and, thus, their statements

1 can be deemed to be anonymous testimony with no probative value.

2 I believe the Chamber will recall that in my final written submissions, I raised the
3 same issue relating to most of the witness statements from the Defence that were
4 submitted under 62(2)(b) during the trial. At least at this stage of the proceedings,
5 the Registry was responsible for certifying the statements. Even though I am
6 convinced that this would not be sufficient to make up for the lack of any proof of
7 identity on the record of this case, the statements from these people were entered into
8 evidence without them having appeared before the Chamber. However, contrary to
9 this particular stage of the proceedings, the Chamber decided that certification by the
10 Registry of written statements submitted under 68(2)(b) was not necessary.

11 This is even more problematic at this particular juncture. If no identity document
12 was adduced during or shown during the interview with the witnesses concerned,
13 nor shown to the witnesses for approval, nor placed on the record of the case, those
14 statements have no probative value and must not be considered by the Chamber
15 when they make their determination.

16 Mr President, your Honours, I wish to recall that we are talking about -- when it
17 comes to the two victims that I called, I provided identity documents for the victims
18 and witnesses, whereas you may recall to an extent the Yekatom team challenged the
19 identity of these people. They carried out their own investigations and they even
20 wanted photographs of these people because they had problems with these witnesses.

21 In the written proceedings concerning these people, no one in this courtroom saw
22 these people, no identity document was provided, so we do not know who these
23 people are. The other participants did not have an opportunity to investigate these
24 peoples' identities, so this is why I, with all due respect, call upon the Chamber to
25 avoid double standards and to consider the fact that, in those cases, those witnesses,

1 the Defence never placed any identity documents on the record and the identity of
2 these people was never established.

3 Five, if in the unlikely event that the Chamber were to decide to rely on written
4 statements from witnesses that were submitted by the Defence under 68(2)(b) without
5 their identity having been established, I do note that witness D29-8019 did make
6 mention of Mr Yekatom's participation in the disarmament of young people and this
7 witness also spoke of efforts he apparently made to help these young people find
8 employment. I do note that this statement is very vague, because we do not know
9 which young people we are talking about. Were these young people from the
10 Muslim community, from the Christian community? Were some of these young
11 people previously part of Mr Yekatom's Anti-Balaka group, no matter what their age
12 may have been? I presume that none of these young people previously took part in
13 his group. In fact, in the written submissions Mr Yekatom's Defence team does not
14 provide the slightest evidence showing any efforts at all that Mr Yekatom used -- any
15 efforts that Mr Yekatom may have made in relation to the young people who
16 previously were part of his group, no matter what their age. The Defence did not
17 even make mention of Mr Yekatom's decision to demobilise the young people who
18 were part of his group at the request of UNICEF.

19 This is quite revealing, because nothing on the case record shows that Mr Yekatom
20 ever made such efforts, and even his decision to agree to UNICEF's proposal to
21 demobilise the young people from his group were not founded on humanitarian
22 reasons or on the sincere intentions of Mr Yekatom, but, rather, the decisions were
23 based on purely pragmatic considerations.

24 I shall not rehearse arguments that I have already made in my written filings, but I
25 would like to draw the Chamber's attention to another aspect relating to the

1 demobilisation of these young people. As we know, for demobilisation purposes,
2 lists of young people were drawn up on the basis of information provided by
3 Mr Yekatom's subordinates. Without any doubt, Mr Yekatom saw those lists
4 because he signed the release.

5 So, at that time, Mr Yekatom saw that amongst the youths concerned there were
6 individuals concerned who had different ages, including youths who were under
7 15 years of age. Therefore, it's reasonable to suggest that by improving the lists in
8 question, Mr Yekatom was in agreement at that time that amongst the young people
9 who were part of his group, there were also children less than 15 years of age.

10 As a professional soldier, a career soldier, Mr Yekatom knew or was supposed to
11 know that the recruitment of children under the age of 15 in his Anti-Balaka group
12 could be seen as a crime and that he could be held responsible for that crime.

13 Nevertheless, he approved the lists.

14 If Mr Yekatom was not in agreement with the information as regards the age of the
15 young people who were estimated to be under 15 years of age who were part of his
16 group, and being aware, as a professional soldier, that he could be held responsible
17 for this, he could have expressed his disagreement with the information on the age of
18 the young people estimated to be under 15. Or, simply, he could not have approved
19 of the lists. But he did not do that.

20 He could have also made a declaration, a statement, that although he did not know
21 before, he noticed after having seen the lists that it seems that there are very young
22 individuals in his group, and that is an additional reason to demobilise these young
23 people because they have no place in the army. He didn't do that either.

24 What he did, however, he expressed his consent to demobilise all the youths,
25 regardless of their age, simply because he no longer had sufficient funds to feed them.

1 It was only at the beginning of the procedure before the Court that Mr Yekatom
2 started to firmly challenge that amongst the young people who were part of his group,
3 and amongst the young people who were on the lists of young people to be
4 demobilised, there were children under the age of 15.

5 There can be no doubt that Mr Yekatom has the right to defend himself with the
6 appropriate means. I expect that the response of the Defence is, at that time, that
7 Mr Yekatom did not see the identity documents of the youth in question and it is only
8 during this trial that the member of his team discovered that the young people that
9 were estimated to be under 15 was in fact a reality, but they might have been more
10 than 15 at the time.

11 However, my argument is different. In both cases, regardless of whether
12 Mr Yekatom at that time accepted the presence of children under the age of 15 in his
13 group, or didn't deem it necessary to question the information regarding the age of
14 children present in his group, nevertheless, it does appear that Mr Yekatom had no
15 concern or problem regarding the age of the young people who were part of his
16 group. This also implies that he had no fear at that time that at some point in time
17 there would be a criminal investigation for the crime of conscription or enlistment of
18 children under the age of 15 in his Anti-Balaka group and their active use in
19 participating in hostilities.

20 Without going further in my reflections on this issue, I respectfully request from the
21 Chamber to bear in mind the circumstances which I have just described in
22 determining the possible sentence to be handed down to Mr Yekatom if he is
23 regarded as guilty with regard to ground 29, just by way of demonstration of the
24 attitude, I would say, which was rather light-hearted of Mr Yekatom as regards the
25 age of the young people who were part of his group.

1 This brings me to my final point. Although the Defence of Mr Yekatom submitted
2 some evidence to show the efforts used by Mr Yekatom to contribute to social
3 cohesion, they never provided any evidence that Mr Yekatom, for example, was
4 interested in the fate of the young people who were part of his Anti-Balaka group
5 after their demobilisation, regardless of their age.

6 In fact, because of their experience in the Anti-Balaka group, youths aged 15, 16 or
7 17 years faced the same risks as children under 15, which they had to face as well
8 when they returned to their respective communities. In particular, stigmatisation by
9 their families and communities, and also problems of social reintegration.

10 Mr Yekatom should have known, or at least must have heard, about this type of
11 problem amongst demobilised youth from the Anti-Balaka group.

12 As a former commander of these young people and, above all, because he had a
13 certain authority during the period when he was a deputy, Mr Yekatom could have
14 used, if he had so decided, he could have done something to contribute to
15 reconciliation of these young people who were demobilised from his Anti-Balaka
16 group and work towards their reintegration with their families and communities,
17 because this reconciliation was a vital factor in social cohesion as well as
18 reconciliation between the Christian and Muslim communities.

19 By way of conclusion, Mr President, your Honours, the victims of the former soldiers
20 of the Anti-Balaka group of Mr Yekatom are not seeking revenge on their former
21 commander. What the victims demand from justice, and if Mr Yekatom is found
22 guilty for the crimes which they had to face, that the sentence must reflect the gravity
23 of the crime in question and must take into account the multiplicity of harm which
24 the victims suffered, as well as the immediate and long-term harm which the victims
25 continue to suffer to this date, despite the time that has passed since those events.

1 Therefore, the victims, former child soldiers from the Anti-Balaka, believe that the
2 sentencing of at least 20 years should be handed down to Mr Yekatom. That will be
3 fair and equitable under the circumstances.

4 For the victims, justice and adequate sanctions for those who are regarded as
5 responsible for the crimes are vital components for their long and painful path
6 towards sustainable peace, both at an individual, family and community level.
7 Justice be rendered.

8 Thank you.

9 PRESIDING JUDGE SCHMITT: [13:17:32] Thank you.

10 I assume the Defence does not want to start after the break, so that concludes the
11 hearing for today.

12 We continue tomorrow at 9.30.

13 THE COURT USHER: [13:17:42] All rise.

14 (The hearing ends in open session at 1.17 p.m.)